



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Dallas R. Sizemore
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO DIXON LUMBER COMPANY, INCORPORATED

SECTION A: Purpose

This is a Special Order by Consent issued under the Authority of Va. Code §§ 62.1-44.15(8a) and (8d) between the State Water Control Board and Dixon Lumber Company, Incorporated, for the purpose of resolving certain violations of that Special Order by Consent issued by the Board to Dixon Lumber Company, Incorporated on June 3, 1994 and amended on March 17, 1999.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Special Order by Consent.
7. "Dixon Lumber" means Dixon Lumber Company, Incorporated.

SECTION C: Basis for This Order

1. Dixon Lumber entered into a Special Order by Consent with the State Water Control Board on June 3, 1994 for removal of a limestone tailings pile located at Dixon Lumber's Austin Meadows site, near Austinville, in Wythe County. That Order, which required removal of the tailings pile by June 1, 1999, was amended in 1999, extending the date for complete removal of the tailings pile until June 1, 2008.
2. Dixon Lumber has requested that DEQ extend the completion date for removal of the limestone tailings pile from June 1, 2008 until June 1, 2015.
3. Approximately one half (reported as 253,439 tons) of the originally estimated 500,000 tons of material has been removed.
4. Dixon Lumber is current with all monitoring and reporting requirements contained in the 1994 Order and 1999 Amendment.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 (8a) and (8d), orders Dixon Lumber, and Dixon Lumber agrees to perform the actions described in Appendix A of this Order, which cancels and supercedes the Special Order issued on June 3, 1994 and amended on March 17, 1999. In addition, the Board orders Dixon Lumber, and Dixon Lumber voluntarily agrees to pay a civil charge of **\$16,109.00** within **30 days** of the effective date of this Order in settlement of the violations cited herein. Payment shall be made by check or money order payable to the "Treasurer of Virginia", and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check or money order, Dixon Lumber shall indicate that this payment is submitted pursuant to this Order and shall include the Company's Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Dixon Lumber, for good cause shown by Dixon Lumber, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent,

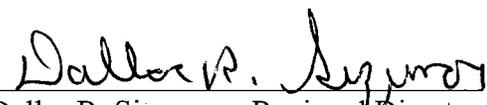
or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Dixon Lumber admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Dixon Lumber consents to venue in the Circuit Court of Washington County for any civil action taken to enforce the terms of this Order.
5. Dixon Lumber declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Dixon Lumber to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Dixon Lumber shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Dixon Lumber must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Dixon Lumber shall notify the Director of the Southwest Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify the Director of the Regional Office within 24 hours of learning of any condition listed above, which Dixon Lumber intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules or specifications attached hereto or submitted by Dixon Lumber and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and Dixon Lumber. Notwithstanding the foregoing, Dixon Lumber agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates this Order in his or its sole discretion upon 30 days written notice to Dixon Lumber. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dixon Lumber from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. The undersigned representative of Dixon Lumber certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Dixon Lumber to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Dixon Lumber.
14. By its signature below, the Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21st day of October, 2008.


Dallas R. Sizemore, Regional Director
Department of Environmental Quality

Dixon Lumber Company, Incorporated voluntarily agrees to the issuance of this Order.

Name: Susie Dixon Garner
Susie Dixon Garner

Title: PRES
President

Date: 7/23/08

State of VA

City/County of Grayson

The foregoing instrument was acknowledged before me this 23 day of July, 2008,
by Susie Dixon Garner, who is President of Dixon Lumber Company, Incorporated on behalf of
Dixon Lumber Company, Incorporated.

Cheryl Davis
Notary Public

My commission expires: 6-30-2010

CHERYL DAVIS
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7045441
My Commission Expires 6-30-10

APPENDIX A

In order to comply with the provisions of the State Water Control Law and regulations, Dixon Lumber agrees to implement the following actions:

1. Continue to submit quarterly water quality monitoring reports, as outlined in the Preliminary Engineering Report (PER) submitted to the Southwest Regional Office on October 14, 1993, by the 20th of the month following the end of a calendar quarter. Sampling frequency remains quarterly, as set by the Amendment issued March 17, 1999.
2. Submit annual reports to the Regional Office on the removal project. Included in this report will be the amount of material removed from the tailings pile for the year, the limestone reclamation activities for the year, any major problems encountered in reclamation activities and a statement of whether or not Dixon Lumber is on schedule to complete the removal of the tailings pile by the date cited below. Each report shall be due on the **20th of February** for each previous calendar year.
3. Install and maintain sedimentation and erosion control devices at the site during removal of the tailings pile as required by DEQ. Dixon Lumber shall reclaim the site in accordance with standard Department of Conservation and Recreation erosion and sedimentation control practices, as removal of the tailings pile progresses, to insure that a minimum amount of land is disturbed, in order to prevent erosion. Dixon Lumber shall cease removal of the tailings pile and take remedial actions if so directed by DEQ, based on quarterly or other water quality sampling results that indicate that discharges from the site contain elevated levels of dissolved metals.
4. Conduct an Engineering Study to determine the amount of tailings pile that must remain on-site to insure stabilization of State Route 69, located at the north end of the Austin Meadows site, and a private pond on an adjacent property immediately east of the site. This study shall include recommendations for stabilization of all outcrops for final restoration of all areas of limestone tailings removal, and a proposal for final establishment and restoration of the stream channel of Buddle Branch. The Engineering Study shall be conducted and a report with the referenced recommendations submitted to DEQ for review and approval no later than **June 1, 2011**. Upon approval, implementation of the recommendations shall become a part of and enforceable under the terms of this order.
5. Complete removal of tailings pile by **June 1, 2015**.